

OFFICE OF THE GENERAL COUNSEL

M E M O R A N D U M

TO: Chief, Dockets Division

FROM: Associate General Counsel, Litigation Division

SUBJECT: Listeners' Guild, Inc. v. FCC & USA, No. 93-1687. Filing of a new Petition for Review in the United States Court of Appeals for the District of Columbia Circuit.

DATE: October 26, 1993

Docket No(s). MM 93-54

File No(s). BRH-810201QL, BPH-910430ME  
and BPH-910502MQ

This is to advise you that on October 14, 1993, Listeners' Guild, Inc., filed with the United States Court of Appeals for the District of Columbia Circuit a:

X Section 402(a) Petition for Review  
— Section 402(b) Notice of Appeal

of the following FCC decision: In re Applications of GAF Broadcasting Company, Inc., FCC 93-385, released August 16, 1993. Listeners' Guild challenges the Commission's Order that denied its petition to deny the application of GAF for renewal of the license of radio station WNCN (FM), New York, NY.

Due to a change in the Communications Act, it will not be necessary to notify the parties of this filing.

The Court has docketed this case as No. 93-1687 and the attorney assigned to handle the litigation of this case is C. Grey Pash, Jr.

  
Daniel M. Armstrong

cc: General Counsel  
Office of Public Affairs  
Shepard's Citations

11/17/93

93-00714

IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals  
For the District of Columbia Circuit

FILED OCT 14 1993

LISTENERS' GUILD, INC.,

Petitioner,

v.

FEDERAL COMMUNICATIONS  
COMMISSION AND UNITED  
STATES OF AMERICA,

Respondents.

RON GARVIN  
CLERK

No. 93— 93-1687

RECEIVED

OFFICE OF GENERAL COUNSEL

PETITION FOR REVIEW

LISTENERS' GUILD, INC. ("Guild"), by its attorney, David M. Rice, pursuant to Section 402 (a) of the Communications Act of 1934, as amended, 47 U.S.C. § 402 (a), pursuant to Sections 2342 (1) and 2344 of the Judicial Code, as amended, 28 U.S.C. §§ 2342 (1), 2344, and pursuant to Rule 15 of the Federal Rules of Appellate Procedure, hereby petitions for review\* of the *Hearing Designation Order* issued by the Chief, Audio Services Division, Mass Media Bureau, of the Federal Communications Commission ("Commission" or "FCC"), released March 15, 1993 (No. DA 93-226) (the "HDO"), which, *inter alia*, denied the Guild's *Petition to Deny* the application of GAF Broadcasting Company, Inc. ("GAF") for renewal of the license of radio station

\* On September 14, 1993, the Petitioner herein filed a Notice of Appeal in this Court, now pending as Case No. 93-1618, by which it appealed, pursuant to 47 U.S.C. § 402 (b), from the same FCC orders of which review is sought hereby. This Petition for Review is filed as a protective measure to ensure the availability of review in this Court and to avoid potential future disputes, in light of uncertainty both as to the finality of the underlying actions of the FCC and as to whether review thereof is properly commenced by a Notice of Appeal or by a Petition for Review.

WNCN (FM), New York, New York, and from the *Memorandum Opinion and Order* of the FCC, released August 16, 1993 (FCC 93-385) (the "*Reconsideration Order*"), which, *inter alia*, denied the Guild's *Petition for Reconsideration* of the *HDO*. Copies of the *HDO* and the *Reconsideration Order* are attached hereto. Review is requested of the *HDO* and the *Reconsideration Order* insofar as they denied the Guild's *Petition to Deny* said application.

#### STATEMENT OF THE NATURE OF THE PROCEEDINGS

The *HDO* appealed from denied the Guild's *Petition to Deny* the application of GAF for renewal of the license of radio station WNCN (FM), New York, New York. The *Reconsideration Order* denied the *Petition for Reconsideration* of the *HDO* filed by the Guild.

#### BASIS OF VENUE

Venue is proper in this Court pursuant to Section 2343 of the Judicial Code, 28 U.S.C. §§ 2343.

#### GROUND UPON WHICH RELIEF IS SOUGHT

The actions of the FCC denying the Guild's *Petition to Deny* the renewal of the license of radio station WNCN (FM), New York, New York, without holding a full evidentiary hearing on the issues raised therein, were arbitrary and capricious, were contrary to Commission precedent and applicable law (including, without limitation, 47 U.S.C. § 309 (e)), were not supported by substantial record evidence, and were an abuse of the Commission's discretion.

**RELIEF PRAYED FOR**

The Guild prays that the actions of the FCC denying the Guild's *Petition to Deny* the renewal of the license of radio station WNCN (FM), New York, New York, should be reversed, that this case should be remanded to the FCC with instructions to hold a full evidentiary hearing on each of the issues raised in said *Petition to Deny* and to permit the Guild to participate fully as a party in all such hearing proceedings, and for such other and further relief as to the Court may seem just and proper.

Respectfully submitted,

LISTENERS' GUILD, INC.

By:



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David M. Rice  
Its Attorney

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October 13, 1993